IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

National Bearing Company (Jaipur) Ltd.
Vs.
State and ors.

S.B. CIVIL WRIT PETITION NO.225/2000.

Date of Order:- 14 August, 2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri Alok Sharma for the petitioner.
Shri S.N. Gupta Dy.Govt.Advocate for State.

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Reportable

The petitioner which is a registered company under the Indian Companies Act, 1956 is challenging the order dated 27/7/1999 passed by the Additional Collector (Stamps) Jaipur by which it was required to deposit stamp duty for registration of its amended Memorandum of Association @ 0.5% advelorum on the enhanced share capital amount.

2. The petitioner-company was incorporated in the name and style of National Bearing Company (Jaipur) Ltd. under the Jaipur Companies Act, 1942 at Jaipur on 13/1/1948 with its registered Office at Jaipur. Clause 5 of its Memorandum of Association prior to the amendment dated 16/10/1998 contained thus:-

> “5. The capital of the Company is Rs.5,75,00,000 (Rupees Five Crores Seventy-five lacs) divided into 55,00,000 shares of Rs.10 each and 25000 shares of Rs.100 each with power to sub-divide, consolidate and increase or decrease and with power from time to time to issue any share of the original capital or any new capital with the subject to any preferential, deferred, qualified or special rights, privileges or conditions as may be thought fit and

upon the sub-division of a share to apportion the right to participate in profits in any manner as between the shares resulting from such sub-division."

3. Share holders of the company in the annual general meeting held on 16/10/1998 resolved to substitute aforesaid clause 5 by the following:-

"5. The capital of the Company is Rs.16,25,00,000 (Rupees Sixteen Crores Twenty-five Lacs) divided into 1,60,00,000 shares of Rs.10 each and 25,000 shares of Rs.100 each with power to sub-divide, consolidate and increase or decrease and with power from time to time to issue any share of the original capital or any new capital with the subject to any preferential, deferred, qualified or special rights, privileges of

> conditions as may be thought fit and upon the sub-division of a share to apportion the right to participate in profits in any manner as between the shares resulting from such sub-division."

4. Articles of Association of the company in clause 3 thereof provides that the capital of the company shall be such amount as may, from time to time, be authorized. It is the common case between the parties that no amendment to Article 3 of the Articles of Association was carried out by the company. Section 3 of the Rajasthan Stamp Law (Adaptation) Act, 1952 (in short, "Act of 1952") provides that various instruments shall be charged with duty of amounts indicated in the schedule. Schedule II to the Act of 1952 describes

various instruments excisable to stamp duty as per rates indicated therein. Section 2(14) of the Act of 1952 defines an instrument to include every document by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished. Aforesaid Schedule II also includes Articles of Association of a company at Serial No.10 of Memorandum of Association at Serial No.39. The Companies Act, 1956 defines the Articles of Association under Section 2(2) whereas it defines the Memorandum of Association under Section 2(28). Provisions of the Companies Act, 1956 that deal with the Memorandum of Association are contained from Sections 12 to 19 whereas Section 26 refers to Articles of Association to be signed by the

subscribers of the Memorandum of Association of a Company and Section 31 provides the manner of alteration of the Articles of Association. Entry 10 of Schedule-II to the Act of 1952 provides that for increased capital by a company stamp duty @ 0.5% to the extent of increase in the amount of share capital by way of amendment in Articles of Association shall be payable. Article 10-A was inserted in Schedule-II of the Act of 1952 by Rajasthan Finance Act, 1997 w.e.f. 1st April 1997. The Additional Collector (Stamps) has passed the impugned-order dated 27/7/1999 under those provisions which is being impugned in the writ proceedings by the petitioner company.

5. I have heard Shri Alok Sharma, learned counsel for the petitioner and

Shri S.N. Gupta, learned Deputy Government Advocate for the State and perused the material on record.

6. Shri Alok Sharma, learned counsel for the petitioner argued that while the Rajasthan Finance Act, 1997 has affected amendment in article 10 of Schedule-II relating to Articles of Association of the Act of 1952 by separately inserting article 10A but no corresponding amendment has been made in article 39 which pertains to Memorandum of Association of a Company. No stamp duty therefore can be levied and demanded in respect of enhancement of the authorized share capital of the company by way of amendment of the Memorandum of Association. The company has merely sought an amendment of clause 5 and in its Memorandum of Association no consequential

amendment has thus been made in the Articles of Association. This still remains as it was. Shri Alok Sharma argued that for determination the stamp duty on amendment of Memorandum of Association, reference ought to be made only to article 39 of Schedule-II of the Act of 1952 and no other entry. When Memorandum of Association has been specifically and separately indicated in the Schedule-II supra as an independent entry, no entry other than that can be pressed into service for charging the stamp duty. In fact, petitioner-company pursuant to the amendment in clause 5 of its Memorandum of Association on 16/10/1998 sought to file the said amendment in Form No.5 under the Company Court Rules as required by the Companies Act, 1956 before the Registrar

of Companies Jaipur vide their letter dated 28/10/1998. Registrar however refused to accept Form No.5, arbitrarily and illegally requiring the petitioner to first pay the stamp duty. The petitioner company was constrained to furnish amendment of its Memorandum of Association for Form No.5 to the Registrar of Companies vide registered letter dated 28/10/1998 and when it did not receive any communication from the Registrar of Companies thereabout, it had to serve a notice on him through its counsel on 17/11/1998 raising all those grounds which are being agitated in this petition and that the Articles of Association of a Company could not be confused with Memorandum of Association which were two distinct and separate instruments required

to be stamped with reference to separate entries in the Second Schedule of the Act of 1952 and that the Memorandum of Association of the Company having already been registered, there was no requirement under the Act of 1952 for paying stamp duty with regard to any amendment brought about therein. The Additional Collector (Stamps) by his order dated 27/7/1999 relying on the purported legal advise of the Deputy Legal Remembrancer Ajmer by his letter dated 2/7/1999 required the petitioner to deposit the stamp duty for registration of Form No.5 under the Companies Act, 1956 in respect to the amendment of the Memorandum of Association @ 0.5% advelorum on the amount of Rs.10,50,00,000/- being the difference between pre-amendment and

post-amendment share capital of the petitioner-company consequent upon the change in clause 5 of the Memorandum of Association vide resolution dated 16/10/1998. It was argued that the notice dated 17/11/1998 addressed by the petitioner-company to the Registrar of Companies has completely been overlooked inasmuch as, the Additional Collector (Stamps) has not applied his mind to those questions. No opportunity of hearing was provided to the petitioner prior to passing of the impugned-order. It was incumbent upon the Additional Collector (Stamps) to resort to the provisions of Section 47-C of the Act of 1952 before making a formal demand of payment of stamp duty. He has however in passing the impugned-order has acted ultravires of the

provisions of the Act of 1952 and also acted contrary to the procedure contained in the said Act.

7. Shri Alok Sharma relied on the judgment of the Supreme Court in M/s.Baidyanath Ayurved Bhawan (Pvt.) Ltd., Jhansi Vs. The Excise Commissioner, U.P. and others : AIR 1971 SC 378 and Income Tax Officer, Tuticorin Vs. T.S. Devinatha Nadar etc. : AIR 1968 SC 623.

8. On the other hand, Shri S.N. Gupta learned Deputy Government Advocate appearing for the State of Rajasthan while opposing the the writ petition argued that the impugned-order could not be straightway challenged before this Court in extraordinary remedy of writ jurisdiction in the face of alternate

remedy of revision available to the petitioner under Section 65 of the Stamp Act before the Chief Controlling Revenue Authority. On merits, he argued that although article 10 of Schedule-II of the Act of 1952 deals with Articles of Association and article 39 deals with the Memorandum of Association of the Company however, article 39 itself provides that amount of stamp duty leaviable on Memorandum of Association shall be same as may be stamp duty on Articles of Association (No.10) pertaining to the share capital of the company or rupees five hundred, whichever is higher. Therefore, even if no amendment was made in article 39 of the Schedule-II itself, by virtue of amendment in article 10 of the said Schedule, Memorandum of

Association when amended is liable to attract to the levy of stamp duty at the same rate at which stamp duty was levied on amendment in the Articles of Association. According to article 10A of Schedule-II, Articles of Association of a company, if amended, stamp duty @ 0.5% advelorum to the extent of increase in the amount or authorised share capital is required to be paid. There was therefore no illegality in passing the impugned-order because Article 39 by itself incorporated Article 10 of Schedule-II of the Act of 1952. It was therefore prayed that the writ petition be dismissed.

9. In the facts of the case, however, when the writ petition has remained pending before this Court for last over

seven years, I have purposely not dealt with the argument of alternative remedy because that would have necessitated the remand and further delay in final decision of the matter, therefore I have proceeded to consider the matter on merit.

10. In order to appreciate and decide the controversy involved in the present writ petition, it would be appropriate to reproduce article 10, article 10-A and article 39 of the Second Schedule of the Act of 1952 which are as under:-

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Description of Instrument	**Proper Stamp duty**
[10.Articles of Association of a Company-] **Exemption :** Articles of any association not formed for profit and registered under section 26 of the Companies Act, 1956.	Half (0.5) percent of the authorized share capital.
[10-A. Amendment in Articles of Association of a Company.-] (i) If relating to increase in authorized share capital; (ii) in any other case. **Exemption:** Articles of any association not formed for profit and registered under section 26 of the Companies Act, 1956.	Half (0.5) percent of the increase in authorized share capital. One hundred rupees.
[39. Memorandum of Association of a Company:] (a) if accompanied by Articles of Association under section 26 of the Companies Act, 1956. (b) if not accompanied.	Five hundred rupees. The same duty as on Articles of Association (No.10) pertaining to the share capital of the company or rupees five hundred, whichever is higher.
Exemptions : Memorandum of any association not formed for profit and registered under section 26 of the Companies Act, 1956.	

11. While article 10 refers to Articles of Association of a Company, article 10-A covers an amendment in Articles of

Association of a Company relating to increase in the authorized share capital. It should be clear from the aforesaid two entries that while article 10 seeks to cover only such Articles of Association of a company which are originally framed whereas article 10-A covers the amendment in the Articles of Association of a company. While in article 10, the earlier formula of the levy of stamp duty has been amended to provide levy of advolerum stamp duty at the rate of 0.5% on the authorized share capital, the same rate has also been provided in relation to increase in the authorized share capital by way of amendment in the Articles of Association of a Company. What therefore has to be decided is as to whether amendment in the Memorandum of Association of a Company

which has the effect of enhancing the share capital of a company, can attract levy of the same duty even though there was no corresponding amendment in the Articles of Association. Article 39 of Schedule-II, clause (b) provides that if Memorandum of Association of a Company is not accompanied by Articles of Association, it shall be liable to levy of the same duty as on an Articles of Association pertaining to the share capital of the company or Rs.500/-, whichever is higher. It is significant to note that article 39 was simultaneously amended by the same Rajasthan Finance Act, 1997 (Act No.9 of 1997) w.e.f. 1/4/1997 by which itself by which article 10-A was inserted in the Act of 1952. When Articles of Association is straightway amended so

as to increase the share capital of a company without making any corresponding amendment in its Memorandum of Association, this would mean; issuance of share capital upon Memorandum of Association of a Company. In such case article 39 of Schedule-II cannot be invoked for levy of stamp duty but article 10-A would be attracted. When however Memorandum of Association of a Company is sought to be registered, article 39 would be attracted but article 39 has also been purposely divided in two categories viz. Clause (a) and clause (b). While clause (a) provide that if Memorandum of Association of a Company is accompanied by Articles of Association under Section 26 of the Companies Act, 1956 then, only a fixed stamp duty of Rs.500/- shall be

payable. This stamp duty has been limited to only Rs.500/- at the fixed rate because separate entry in article 10 already covers the Articles of Association whereunder, advelorum rate of 0.5% on the authorized share capital has been provided. And this has been purposely done to ensure that there should be no double taxation in so far as the amount of authorized share capital is concerned. Similarly, once Articles of Association has been registered but in the course of time if it is sought to be amended so as to affect increase in the authorized share capital, it will attract levy of stamp duty at the rate of 0.5% to the extent of difference of the share capital pre-amendment and post-amendment. Clause (b) of article 39 however provides that if

Memorandum of Association of a Company is not accompanied by Articles of Association under Section 26 of the Companies Act, 1956, it would attract the same duty as on Articles of Association (No.10) pertaining to the share capital of a company or Rs.500/-, whichever is higher. In the present case therefore the argument of the petitioner does not stand scrutiny. While the petitioner has brought about amendment in the Memorandum of Association of the company by substantially increasing its authorized share capital, it has, however, not affected any corresponding amendment in the Articles of Association. But, this would not make a difference because it has nevertheless presented the amendments in the Memorandum of Association on Form No.5 under the Company Court Rules for

registration before the Registrar of Companies. Such a case, therefore, would fall within clause (b) of entry of article 39 being a Memorandum of Association not accompanied by Articles of Association being straightway presented for registration and therefore would attract the same duty as applicable on Articles of Association pertaining to the share capital of the company or Rs.500/-, whichever is higher. Even though, article 39 has not specifically provided for a provision similar the one contained in article 10-A relating to increase in the authorized share capital by way of amendment in the Articles of Association, nevertheless, when article 39 refers to the chargeability of stamp duty even on registration of Memorandum of Association

of a Company with reference to Articles of Association pertaining to share capital of the company at the same rate as indicated in article 10, there can be no escape for the petitioner-company but to pay demanded stamp duty because such an incident would fall in clause (b) of article 39 of Schedule-II of the Act of 1952 which provides for registration of the Memorandum of Article of Association not accompanied by Articles of Association. The intention of the legislature to levy stamp duty on registration of Memorandum of Association of a Company is clearly manifest in the simultaneous amendment made in articles 10 and 39 and insertion of article 10-A in the Schedule-II of the Act of 1952. A conjoint reading of articles 10, 10-A and 39 clearly shows

that petitioner-company if what the petitioner is contending is accepted, this would mean that while stamp duty in the case of originally presented Memorandum of Association not accompanied by Articles of Association would be payable at the same rate as on Articles of Association pertaining to the share capital of the company as provided in article 10, no such stamp duty would be payable in the case of increase in the authorized share capital of the company in Memorandum of Association just because no corresponding amendment has been affected in its Articles of Association. This would give rise to incongruous results inasmuch as, while Memorandum of Association not accompanied by Articles of Association would be excisable to stamp duty, an

amended in Memorandum of Association would escape the levy of stamp duty even if it seeks to effect increase in the share capital of the company.

12. The interpretation of the subject entry even though to made strictly but has to made keeping in view the scheme of the Act read with its Schedule-II. In interpreting a taxing statute, the court has to look at what has been clearly said. There is neither any presumption of the tax nor can there be equity in such matter as held by their lordships of the Hon'ble Supreme Court in **M/s.Baidyanath Ayurved Bhawan (Pvt.) Ltd. Supra.** And I have taken this interpretation on collective and cumulative reading of articles 10, 10-A and 39 of Schedule-II of the Act of 1952,

nothing being added or subtracted or supplemented thereto.

13. Having examined the matter as aforesaid, I do not find that the order passed by the learned Additional Collector (Stamps) Jaipur suffers from any such illegality or infirmity as may warrant interference by this Court in exercise of its powers of judicial review under Article 226 of the Constitution of India.

The writ petition is accordingly dismissed though without any order as to costs.

(MOHAMMAD RAFIQ), J.

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